LIBRARY
SUPREME COURT, U. S.

Office-Supreme Court, U.S.
FILED
NOV 6 1968
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

October Term, 1968
No. 617

SUZANNE G. OGLE,

Appellant,

vs.

V. A. HEIM, Auditor-Controller of the County of Orange, State of California,

Respondent.

MOTION OF RESPONDENT TO DISMISS.

ADRIAN KUYPER,
County Counsel,
ROBERT F. NUTTMAN,
Assistant County Counsel,
515 North Sycamore Street,
P.O. Box 1863,
Santa Ana, Calif. 92702,
Attorneys for Respondent.

Parker & Son, Inc., Law Printers, Los Angeles. Phone MA. 6-9171.

SUBJECT INDEX

	Page
Motion of Respondent to Dismiss	1
Statement of Facts	1
Argument	3
1. State Court Decisions Based Upon Adequate Non-Federal Grounds Are Not Reviewable in the Federal Courts	3
2. The State Court Judgment Here Is Based Upon a Non-Federal Ground	4
3. The Non-Federal Ground Is Adequate to Support the State Court Judgment	6
4. No Special and Important Reasons Exist for a Review on Writ of Certiorari	8
Conclusion	9

TABLE OF AUTHORITIES CITED

Cases	Page
Berea College v. Kentucky, 211 U.S. 45, 29 S. Ct. 33	4
Enterprise Irrigation Dist. v. Farmers Mutual Canal Co., 243 U.S. 157, 37 S. Ct. 318	3, 6
Fox Films Corp. v. Miller, 296 U.S. 207, 56 S. Ct. 183	4
Greenough v. Tax Assessors, 331 U.S. 486, 67 S. Ct. 1400, 172 A.L.R. 329	6
Moran v. Horsky, 178 U.S. 205, 20 S. Ct. 856	3
Murdock v. Memphis, 20 Wall. 590, 22 L. Ed. 429	4
Schooley v. Schooley, 184 Iowa 835, 169 N.W. 56, 11 A.L.R. 110	7
Smallbone, In Re, 16 Cal. 2d 532	5
Codes	
California Code of Civil Procedure, Sec. 710	4
California Government Code, Sec. 31452	1, 2, 4, 5
Miscelloneous	
11 American Law Reports, p. 123	8
106 American Law Reports, p. 669	8
130 American Law Reports, p. 1028	8

IN THE

Supreme Court of the United States

October Term, 1968
No. .....

SUZANNE G. OGLE,

Appellant,

vs.

V. A. HEIM, Auditor-Controller of the County of Orange, State of California,

Respondent.

MOTION OF RESPONDENT TO DISMISS.

Respondent in the above-entitled case moves to dismiss Appellant's Appeal from the Supreme Court of California on the ground that the judgment of said Court rests on an adequate non-federal basis.

Statement of Facts.

The decision of the Supreme Court of California sought to be reviewed upheld a lower court decision denying a writ of mandate to compel the Auditor-Controller of Orange County, California, to honor the execution of a judgment for child support from retirement benefits of Joel E. Ogle, a former County employee. California Government Code Section 31452 exempts such retirement allowances from "execution, garnish-

ment, attachment, or any other process of court whatsoever." The California Supreme Court interpreted said Section 31452 in conjunction with various sections of the California Code of Civil Procedure pertaining to execution of judgments and concluded that said retirement benefits, under the laws of this State, were exempt from court process. The Court did not allude to any constitutional argument in its decision.

ARGUMENT.

1. State Court Decisions Based Upon Adequate Non-Federal Grounds Are Not Reviewable in Federal Courts.

The United States Supreme Court has consistently adhered to the self-imposed principle that it will not review a state court judgment based upon an adequate and independent non-federal ground. This is premised upon the fact that the federal court's only power over state judgments is to correct them to the extent that they incorrectly adjudge federal rights. In order to be an adequate nonfederal ground, such ground must be "independent" and "broad enough to sustain the judgment."

Moran v. Horsky, 178 U.S. 205, 20 S. Ct. 856, upheld a state court decision which was primarily based upon the defense of laches, but also involved was the question of legal title under a patent issued to a tract of federal public land, the United States Supreme Court holding that the defense of laches was an "independent non-federal question, one broad enough to sustain the judgment. . . ."

In *Enterprise Irrigation Dist. v. Farmers Mutual Canal Co.,* 243 U.S. 157, 37 S. Ct. 318, the United States Supreme Court dismissed for want of jurisdiction an appeal from a state court decision involving water rights when the non-federal ground of estoppel was made "an independent ground of the judgment," separately from the Federal question of whether the State Board of Irrigation's procedures had infringed upon the due process and equal protection provisions of the 14th Amend-

ment. The United States Supreme Court observed that, "The due process clause does not take up the laws of the several states and make all questions pertaining to them constitutional questions, nor does it enable this court to revise the decisions of the state courts upon questions of state law."

Fox Films Corp. v. Miller, 296 U.S. 207, 56 S. Ct. 183, involved the question of the legality of an arbitration clause in a motion picture exhibition contract, and also whether the contract violated the Sherman Anti-Trust Act. The United States Supreme Court held that the state court's ruling that the concededly illegal arbitration clause was inseparable from the rest of the contract was "clearly a question of general and not of federal law" and was sufficient to sustain the judgment without reaching the federal question as to the validity of the contract under the Act.

2. The State Court Judgment Here Is Based Upon a Non-Federal Ground.

Numerous federal cases stand for the proposition that no federal question is presented by the decision of a state court construing its statutes or constitution, whether or not the court was persuaded by a misunderstanding of federal law. *Murdock v. Memphis,* 20 Wall. 590, 22 L. Ed. 429. *Berea College v. Kentucky,* 211 U.S. 45, 29 S. Ct. 33.

In the instant case the major thrust of Appellant's position in the California courts was that Code of Civil Procedure Section 710 provides for the garnishment of moneys owing to a judgment debtor by a public entity and that Government Code Section 31452, which whol-

ly exempts from court process pension rights and the money in a fund created under the County Employees Retirement Law of 1937, should not be interpreted so as to include child support payments in such exemption from court process. Appellant's legal briefs were almost entirely devoted to the proper interpreting of said state statutes.

Secondarily, and with no separate authority cited for the proposition, Appellant contended that the interpretation given by the trial court and the District Court of Appeal to said Section 31452 served to deprive the minor children of their property without due process of law, in violation of the California and Federal Constitutions.

The issue so obviously centered upon an interpretation of a state statute that neither the District Court of Appeal nor the State Supreme Court devoted a single line or word to any constitutional issue. The Supreme Court noted a whole battery of California statutes which insulate by special legislation pensions to retired governmental employees, not one of which "contains any suggestion that dependents are to be treated differently from other *creditors*." The Supreme Court then proceeded to cite the decisional law of the State upholding such exemptions; *In re Smallbone*, 16 Cal. 2d 532, for example. The Court considered contrary holdings in other states and found them to be "not impressive" and not "warranted by the public policy of the state." It also noted that under the laws of this State "dependents do have remedies against the recalcitrant, of which contempt is the most efficacious." The Court concluded by stating that,

> "In view of the present clarity of statute and decisional law, the burden of change, if any, and its extent, should be on the Legislature and not this court."

Patently, the State Supreme Court's decision was based on a nonfederal ground, and it was not necessary to the decision to reach a federal ground, if such exists in this case. As indicated in *Enterprise Irrigation Dist. v. Farmers Mutual Canal Co., supra,* the due process clause does not make all questions pertaining to the interpretation of state statutes into constitutional questions. Otherwise, the highest courts of the several states would be mere stepping stones in the path of every unsuccessful litigant on his march to the United States Supreme Court.

3. The Non-Federal Ground Is Adequate to Support the State Court Judgment.

> "State courts construe their statutes according to their understanding of state policy and apply them to such situations as their interpretation of the statutory language requires. In so adjudging, they are the final judicial authority upon the meaning of their state law." (*Greenough v. Tax Assessors,* 331 U.S. 486, 67 S. Ct. 1400, 172 A.L.R. 329).

Just as in *Greenough* where the United States Supreme Court found no precedent to indicate "that the federal constitution contains provisions that forbid taxation by a state of intangibles in the hands of a resident testamentary trustee," Respondent submits that there is no provision in the United States Constitution which

forbids a state from exempting certain classes of property, or rights therein, from attachment, garnishment, or other legal process. Here, the State Supreme Court's decision rests upon a fair and substantial basis. It is founded upon a number of other California statutes exempting pensions from legal process and California court decisions upholding and interpreting them, all evidencing a clear public policy of the state protecting pension rights from legal process. Clearly, said decision was not drafted so as to evade any constitutional guarantee.

Statutes pertaining to garnishment and other execution by court process, as well as exemption statutes, are procedural matters of a local nature, and their interpretation is not a proper federal question. Such statutes do not concern themselves with property rights in the funds which are exempt from execution.

The case of *Schooley v. Schooley,* 184 Iowa 835, 169 N.W. 56, 11 A.L.R. 110 upheld a lower court's grant of a motion to discharge the garnishee in an action brought by an ex-wife under an alimony award to reach the wages of her ex-husband. The specific holding is not important here and, in fact, it appears that the Iowa statute was subsequently amended in favor of the "creditor." Of significance, however, is the statement of the Iowa Supreme Court that,

> "Taking the country over, there are perhaps no two states in which the exemption statutes are so nearly identical that the construction and effect given to one jurisdiction may be said to be satisfactory precedent for the construction and effect of another in another jurisdiction. Again, there is no uniform policy of the courts in general with

> respect to these laws. In some they are construed and applied with great liberality . . . while in others the tendency is to the opposite extreme. . . . Exemptions being strictly creatures of the statute, the question when the right exists, and the scope of such right, resolves itself, in final analysis, into one of construction of the legislative language, and in such matters the courts of each state ordinarily adhere to their own views of the expressed legislative intent."

The matter of enforcement of alimony claims against statutory exemptions is the subject of annotations at 11 A.L.R. 123, against homesteads at 106 A.L.R. 669, and against disability insurance at 130 A.L.R. 1028. In affirmation of Respondent's contention that this is purely a local, non-federal question, it is to be noted that not a single citation in any of these three annotations is from the United States Supreme Court.

4. No Special and Important Reasons Exist for a Review on Writ of Certiorari.

Appellant concludes his petition by requesting that the petition be considered in the alternative as one for a writ of certiorari. No additional reasons are cited as to why this writ should be granted. Respondent refers to his reasons hereinabove set forth as to why certiorari should not be granted. Certainly, the state court's judgment sustaining a state statute on a matter of state procedure is an adequate non-federal ground. No "special and important reasons" exist for review by way of such writ (Rule 19), and Appellant has asserted none in support of her request.

Conclusion.

Respondent respectfully submits that the judgment of the Supreme Court of California rests on an adequate non-federal basis and that this Honorable Court has no jurisdiction over this appeal; that, in addition, no special and important reasons exist for a grant of writ of certiorari by this Honorable Court; and that, therefore, this Motion to Dismiss should be granted.

ADRIAN KUYPER,
County Counsel,
ROBERT F. NUTTMAN,
Assistant County Counsel,
By ROBERT F. NUTTMAN,
Assistant County Counsel,
Attorneys for Respondent.